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# Landmark Chambers and Herbert Smith Freehills

## Implications of the new NPPF for the Living Sector

Breakfast Seminar, 14 January 2025

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# DECISION TAKING UNDER THE LABOUR NPPF



Zack Simons



# PLAN-MAKING UNDER THE LABOUR NPPF



Dr Ashley Bowes



# FOUR KEY TAKEAWAYS

More sites required

More opportunities for allocations

More opportunities for applications

But some obvious flashpoints



## MORE SITES REQUIRED

Standard method now a minimum (para.62)

Stock-based approach delivers 21% more than projections method

Affordability adjustment above ratio of 5:1 increases from 0.25% to 0.95%

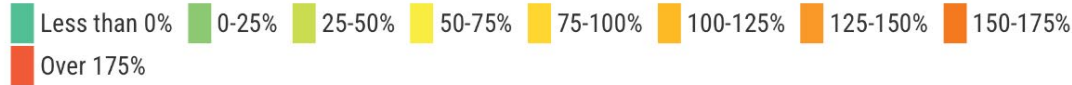


# Change %

From current method

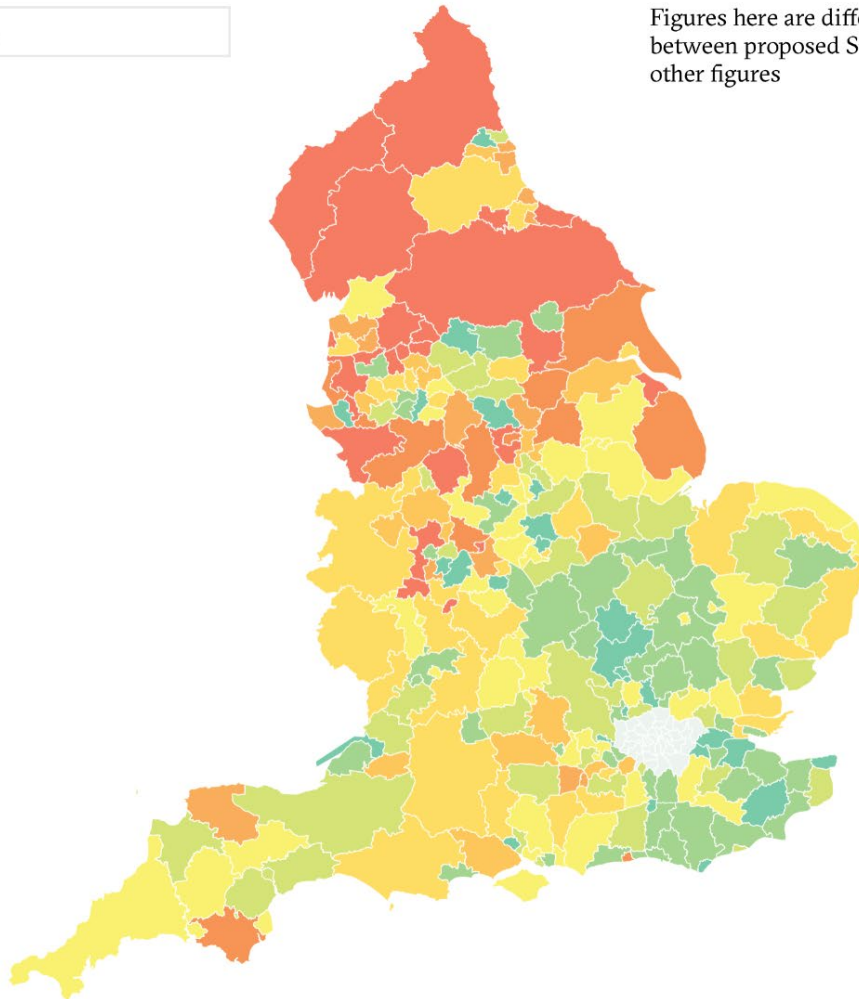
From current Local Plan

From average delivery



Search..

Figures here are difference between proposed SM and other figures



Source: MHCLG 2024, Lichfields Analysis

## PPG example:

- If house prices outstrip median workplace earnings by more than 10, over last five years, that equates to a 95% increase on baseline

Source: Litchfields  
online resource:

<https://view.genially.com/66a8d4105bc73ba1f66a4e8b>



# OPPORTUNITY 1: PDL in the urban area

Priority for brownfield retained (para.73,  
124, 125(c))

Glossary definition expanded:  
Hard-standing not in a curtilage now  
included

Policies should allocate PDL for housing  
(and other identified needs) unless  
“substantial harm” would be caused  
(para.125(c))



## OPPORTUNITY 2: Grey Belt

Prioritised over other Green Belt for meeting needs (para.148)

PDL or any land which does not “strongly” contribute to purposes (a), (b) or (d) (save for fn.7 situations)

Still need “exceptional circumstances” but not subject to “Golden Rules” if fewer than 10 or 0.5ha



## OPPORTUNITY 3: Green Belt which is not Grey Belt

Exceptional circumstances now includes meeting identified need for homes (para.146)

GB land should be used to meet needs, unless it would fundamentally undermine remaining GB, when considered across the area of the plan (para.146)

Some undermining of GB purposes at a localised level assumed

Perhaps off-set by application of Golden Rules for developments of 10 or more, or over 0.5ha (para.156-157)



## PREVIOUSLY DISCOUNTED SITES TO REVISIT:

1. Sites of hard-standing (whether or not within the curtilage of a building)
2. PDL or greenfield sites in GB which do not strongly contribute to purposes (a), (b) or (d)
3. PDL or greenfield sites in GB which give rise to only localized harm



# MORE OPPORTUNITIES FOR APPLICATIONS

Limited protections for existing plans through transitional arrangements (Annex 1)

Pyrrhic victory anyway: para.236 requires work to begin on new LP if meeting less than 80% of new LHN

Even if not caught by 236: para.232 only applies to LHN changes, not other policy changes

Major changes for local government and devolution, potentially far fewer authorities and delays

Limited tolerance for existing plans to correct problems. More than 6-month delays unlikely to be allowed.



# FLASHPOINTS

<p>LHN mandatory starting point for requirement (para.62)</p>	<p>Even mandatory language can be outweighed (see <u>Asda</u> [2021] EWCA Civ 32 on retail policy)</p> <p>Ultimately a housing requirement a discretion for LPA (and inspector) which policy cannot fetter, see <u>West Berkshire</u> [2016] EWCA Civ 441 – ban on AH contributions for small sites not mandatory)</p> <p>A plan can be lawfully adopted which does not follow national policy, see <u>Mead Realisations</u> [2024] EWHC 279 (Admin)</p> <p>Even when SM mandatory, Central Beds justified an exemption.</p>
<p>Meet needs in full, including from other areas (para.11(a))</p>	<p>Can be outweighed by footnote 7 policies (national landscapes, European sites etc)</p> <p>Can be outweighed by para.11(b) considerations (e.g. "ordinary" countryside protections remain (para.187(b))</p>



# FLASHPOINTS

Use GB to meet needs in full (para.146)

Still told extent of GB “generally established” (para.144)

No definition of “*fundamentally* undermine” (para.146) – is a geographically small loss incapable of being fundamental?

Still required to promote sustainable patterns of growth (para.148)

Use PDL development to meet need unless “substantial harm” (para.125(c))

No change to heritage protections

Expanded to WHS/RPG (s.53B LuRA 2023)

“Beauty” minimized as a criterion but bad design consequences remain (para.139)

Still local character a balancing factor (paras.9, 90(a), 117(c), 120(d), 132, 135(c))



# TIPS FOR SUCCESS IN THE GREEN BELT

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1. At least 50% on site affordable (para.157) and/or meeting another identified need (para.146)
2. Does not strongly contribute to purpose (a), (b) or (d)
3. Can make necessary improvements to local infrastructure (ideally confirmed by providers)
4. Provides publicly accessible open space (or improves existing spaces) (“significant weight” of para.158)
5. Is sustainably located (para.148)



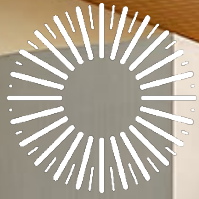


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Other changes to the NPPF,  
Brownfield Passports, New Towns,  
nutrient neutrality and more

**Rebecca Butterworth**, Senior Associate, Herbert Smith Freehills  
**Naomi Hoggett**, Associate, Herbert Smith Freehills



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## Other changes to the NPPF

- Design, “beauty”, character and density
- Community infrastructure
- Upwards extensions
- Affordable housing and tenure mix

Note – references are to the December 2024 NPPF unless otherwise stated



# Design, “beauty”, character and density

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## “Well-designed” versus “beauty/beautiful”

Removed references to “beauty” and “beautiful” added to the NPPF in 2023 to return to focus on “well-designed” development:

- Chapter 12 – removed from title of Chapter.
- Deleted from paragraphs 20 (strategic policies), 77 (previously paragraph 74) (planning for larger scale development), 88 (growth of businesses in rural areas), 96 (promoting healthy and safe communities), 129 (achieving appropriate densities).

## Primacy of National Model Design Code

- Paragraph 138 - National Model Design Code is the primary basis for the preparation and use of local design codes.

## Density and character

- Deleted paragraph 130 added in 2023 relating to significant uplifts in residential density which may be “wholly out of character with the existing area”





# Delivering community needs

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## Public service infrastructure

- **Paragraph 101** (previously 100) – expanded to place significant weight on the importance of facilitating new, expanded or upgraded public service infrastructure. Also expanded the non-exhaustive list of public service infrastructure types.
- **Paragraph 100** (previously 99) – specific reference to early-years and post-16 educational facilities included.



## Transport planning

- **Paragraph 109** (previously 108) of Chapter 9 “Promoting sustainable transport” – new vision-led approach rather than “predict and provide”.
- **Paragraph 115** (previously 114) amended.
- “Vision-led approach” defined in glossary.
- Updated planning guidance to follow.



## Promoting healthy communities

- **Paragraph 96c)** – planning policies and decisions should aim to achieve healthy, inclusive and safe places by
  - promoting good health and preventing ill-health, and
  - reducing health inequalities between the most and least deprived communities.
- **New paragraph 70** – Hot food takeaways and fast-food outlets – LPAs should refuse applications:
  - within walking distance of schools and other places where children and young people congregate, unless within a designated town centre; or
  - where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social-behaviour.



# Affordable housing and tenure mix

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## Social Rent

- Affordable Housing definition now contains '**Social Rent**':  
*“(a) the rent is set in accordance with the Government’s rent policy for Social Rent;  
(b) the landlord is a registered provider; and  
(c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision.”*
- Consequent updates to Paragraphs 63 and 64

## Starter Homes

- Starter Homes/ First Homes provision removed

## Affordable housing requirements

- **Paragraph 66:** *“planning policies and decisions should expect that the mix of affordable housing required meets identified local needs, across Social Rent, other affordable housing for rent and affordable home ownership tenures”*

## Mixed tenure sites

- New **paragraph 71** regarding benefits of mixed tenure sites. *“Mixed tenure sites can include a mixture of ownership and rental tenures, including Social Rent, other rented affordable housing and build to rent, as well as housing designed for specific groups such as older people’s housing and student accommodation, and plots sold for custom or self-build.”*



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# Supporting upwards extensions



## Reduced emphasis on mansard roofs

**Paragraph 125e** (previously 124e):

*“Support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions – including mansard roofs – where the development would be consistent with the prevailing form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers. A condition of simultaneous development should not be imposed on an application for multiple upward extensions unless there is an exceptional justification”*

## Other relevant developments

- New Homes Accelerator Programme
- Brownfield Passports
- New Towns
- Nutrient Neutrality
- Long Term Housing Strategy



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## New Homes Accelerator Programme

- New expert group tasked with expediting delivery of stalled housing projects which are "stuck in the planning system or partially built."
- Call for evidence issued in August 2024: landowners, local authorities, and housebuilders invited to identify blocked sites with significant planning issues.



## Brownfield land (1): NPPF reminder

### Paragraph 125c)

- “Planning policies and decisions should ... give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, **proposals for which should be approved unless substantial harm would be caused**, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.”

### Glossary – Expanded definition of Previously Developed Land (“PDL”)

- Now includes fixed surface infrastructure associated with permanent structures eg large areas of lawfully developed hardstanding (but not glasshouses).



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## Brownfield Land (2): Brownfield Passports

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### **September 2024 Working Paper:**

*“The introduction of an effective ‘brownfield passport’ to ensure where proposals meet design and quality standards, the default answer is yes”*



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## Brownfield Passports – four key ideas

*Principle of development*

*Scale of development*

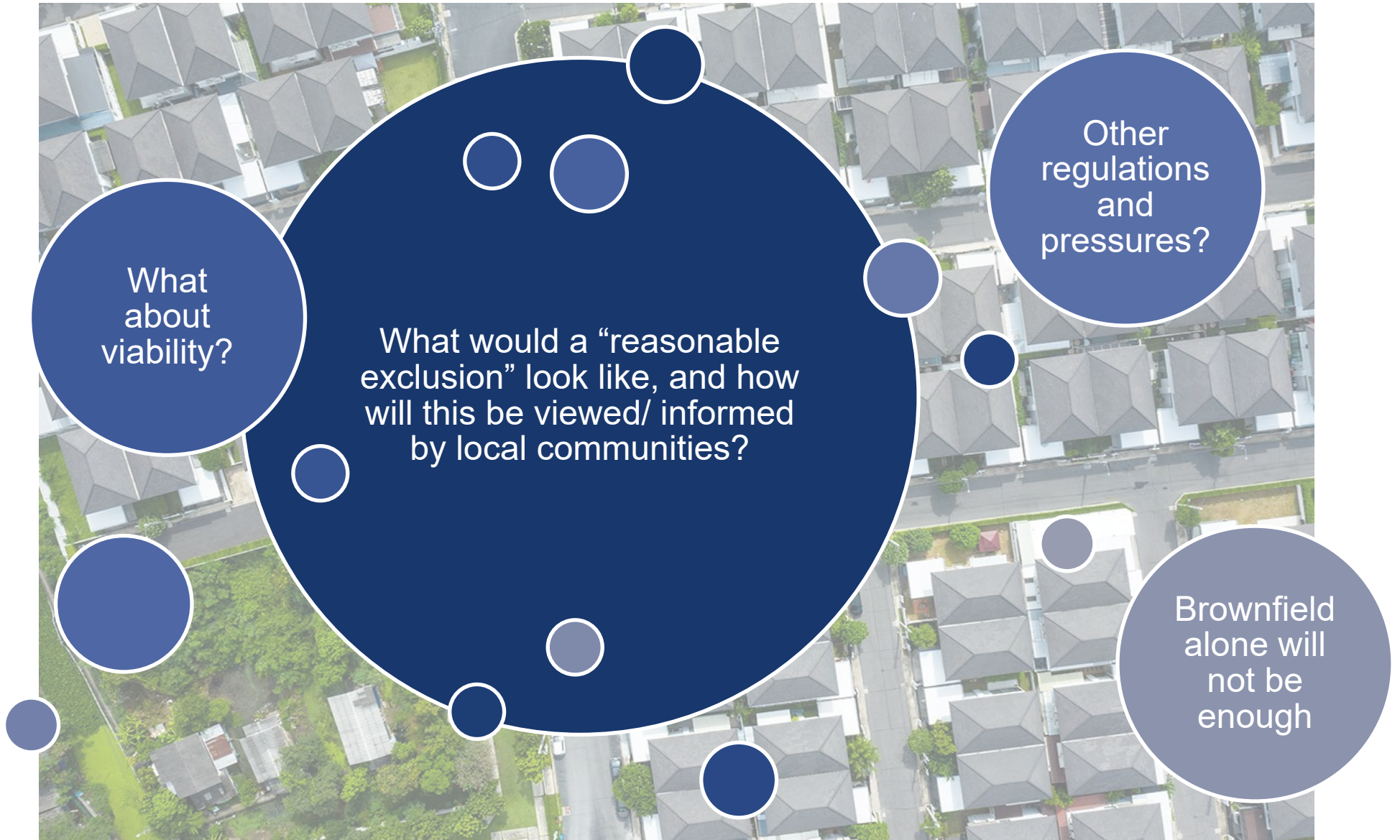
*Form of development*

*Area-wide permissions*

## Brownfield Passports – Working Paper responses and thoughts



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## New Towns

“This government is ... committed to bringing forward the next generation of new towns”

Policy Statement on New Towns, 31 July 2024



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# Policy Statement on New Towns

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31 July 2024



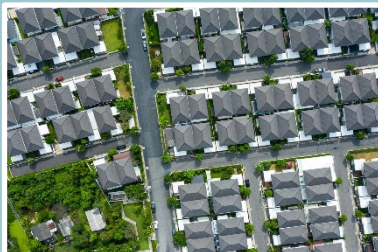
New towns will include urban extensions and regeneration schemes as well as new large-scale green field settlements, each containing at least 10,000 homes with many being "far larger."

- "In the decades to come" the programme will deliver "hundreds of thousands" of homes.



"Exemplary development [is] to be the norm not the exception."

- New towns delivered under the programme must be "well-connected, well-designed, sustainable and attractive places" with all necessary infrastructure, amenities and services.



New Towns Code – timing to be confirmed.

- The code will target delivery of 40% affordable housing, with a focus on affordable social rent.



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# New Towns Taskforce

Chair – Sir Michael Lyons. Deputy Chair – Dame Kate Barker.

## Terms of Reference - 18 September 2024:

- To make recommendations on the location and delivery of New Towns.
- Submit progress report by end 2024 and final report in July 2025, although encouraged to share conclusions on specific sites earlier if possible.
- Site selection to be made in the national interest.

## Remit:

- **Where:** recommend suitable locations and define criteria for selection
- **What:** advise on a New Towns Prospectus
  - advise on the standards to be met - infrastructure, public and private services, and green space required
  - advise on the government ‘offer’ in return
- **How:**
  - evaluate options for an appropriate delivery mechanism.
  - advise on the necessary stewardship arrangements.
  - design and advise on the approach to engage with key stakeholders.
  - support the creation of robust business cases for new towns.



## New Towns Taskforce – Call for Evidence

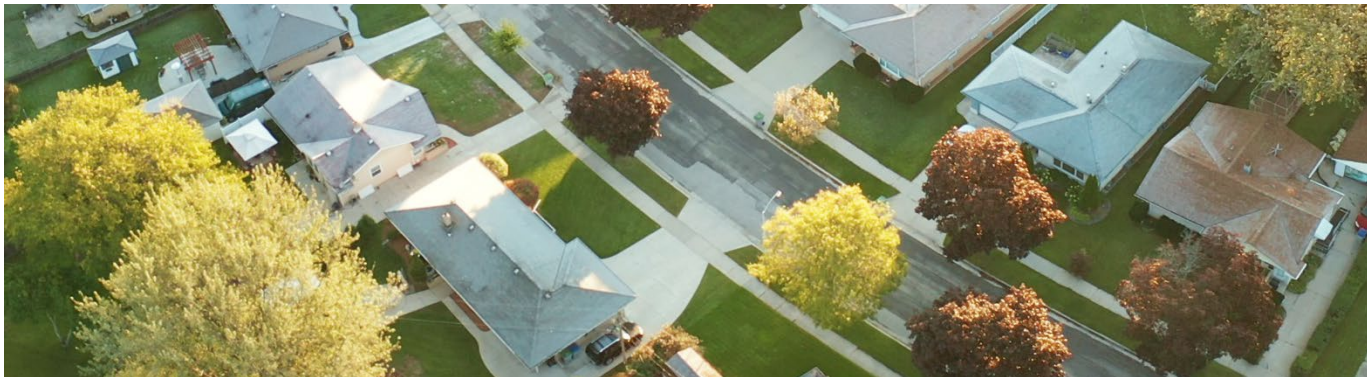
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- Ran from 4 November to 13 December 2024.
- Requested information on location, land ownership, planning status, development type (eg brownfield, greenfield, urban extension), proposed number of homes and jobs (including opportunities for expansion/densification), barriers to development and potential solutions.



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“This is about ensuring the Taskforce are aware of all potential opportunities across the country as part of our evidence gathering and submissions.”

## Nutrient neutrality

- **Planning Reform Working Paper: Development and Nature Recovery – 15 December 2024**
- New centralised approach to delivering mitigation for nutrient pollution using funding from developers
- If taken forward, the proposals will be included in the Planning and Infrastructure Bill (expected March 2025).

*“we can use development to fund nature recovery where currently both are stalled”*

Written Ministerial Statement,  
Building the homes we need, 30 July 2024

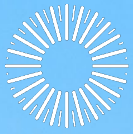


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# Long Term Housing Strategy

*“The housing crisis cannot be fixed overnight”*

Written Ministerial Statement,  
Building the homes we need, 30 July 2024

Long-term housing strategy to be published  
alongside the long-term spending review in  
Spring 2025



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# 4

# Questions and discussion

For a full list of our global offices visit [HERBERTSMITHFREEHILLS.COM](https://www.herbertsmithfreehills.com)

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